

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Juan Bautista Alomia-Torres, #12930-058,)	
)	
Petitioner,)	Civil Action No. 2:15-cv-04605-JMC
)	
v.)	
)	
Bobby Meeks, Warden,)	ORDER
)	
Respondent.)	
_____)	

Juan Bautista Alomia-Torres (“Petitioner”), proceeding *pro se*, brings this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (ECF No. 1.) This matter is before the court upon review of Magistrate Judge Mary Gordon Baker’s Report and Recommendation (“Report”), filed on January 23, 2017, recommending that the court (1) dismiss the Petition (ECF No. 1) without prejudice and without requiring Respondent to file a return; and (2) grant Respondent’s Motion to Dismiss (ECF Nos. 7, 10), because Petitioner has not shown that his sentence is the result of a fundamental error in the criminal proceedings, and this court lacks jurisdiction to entertain Petitioner’s § 2241 petition based on the savings clause of § 2255(e). (ECF No. 12.) The Report details the relevant facts and legal standards on this matter, and this court incorporates the Magistrate Judge’s recommendation herein without a recitation.

The Magistrate Judge’s Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court that has no presumptive weight—the responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976).

The court reviews *de novo* only those portions of a Magistrate Judge’s Report to which specific objections are filed, and it reviews those portions not objected to—including those

portions to which only “general and conclusory” objections have been made—for clear error. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005); *Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). The court may accept, reject, or modify—in whole or in part—the recommendation of the Magistrate Judge or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

Petitioner was advised of his right to file objections to the Report “within fourteen (14) days of the date of service” of the Report. (ECF No. 12.) However, Petitioner filed no objections. In the absence of objections to the Magistrate Judge’s Report, this court is not required to provide an explanation for adopting the recommendation. *See Camby*, 718 F.2d at 199. Furthermore, failure to timely file specific written objections to the Report results in a party’s waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

Therefore, after a thorough and careful review of the Report and the record in this case, this court finds the Report provides an accurate summary of the facts and law and **ACCEPTS** the Report and Recommendation (ECF No. 12). For the reasons articulated by the Magistrate Judge, this court **DISMISSES** the Petition (ECF No. 1) *without* prejudice and without requiring Respondent to file a return. Furthermore, this court **GRANTS** Respondent’s Motion to Dismiss (ECF Nos. 7, 10).

IT IS SO ORDERED.



United States District Judge

March 2, 2017
Columbia, South Carolina